

Assembly Bill No. 1829

Passed the Assembly August 26, 2004

Chief Clerk of the Assembly

Passed the Senate August 23, 2004

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 5703 of the Government Code, and to add Chapter 3.55 (commencing with Section 12140) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1829, Liu. Public contracts: services: domestic workers.

Existing law requires a state agency to comply with specified procedures in awarding agency contracts. Existing law authorizes a state agency to prohibit a person that is convicted of committing specified crimes from bidding on or being awarded agency contracts, as specified.

This bill would prohibit a state agency or local government, as defined, from allocating or expending state funds for employment training for employees located in foreign countries. This bill would also prohibit a state agency, or a local government in expending funds provided by a state agency, from contracting for services with a contractor or subcontractor unless that contractor or subcontractor certifies under penalty of perjury in his or her bid for the contract that the contract, and any subcontract performed under that contract, will be performed solely with workers within the United States. This bill would authorize a state agency or local government to waive this requirement, with the consent of the Controller, if certain conditions are met. This bill would also require the contract to include a clause for termination for noncompliance and specified penalties, if the contractor or subcontractor performs the contract or the subcontract with workers outside the United States during the life of the contract. This bill would specify that these provisions do not apply to seismic retrofit work, as defined, performed pursuant to a contract that is entered into on or before January 1, 2006 or agreements entered into by the Treasurer in connection with the sale of any evidence of indebtedness. This bill would also specify that these provisions do not apply to a contract, if refusing to award that contract would violate the specific terms of federal trade treaties, as specified.



By requiring contractors and subcontractors to make certifications under penalty of perjury, this bill would create a new crime and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The United States has lost nearly 3 million jobs over the last three years, with at least 15 percent of these jobs outsourced to a foreign country.

(b) Outsourcing by the state and local government technology sector is a growing trend, with an estimated \$10 billion in net contract value subject to outsourcing to foreign countries in 2003. By 2008, an estimated \$23 billion in net contract value will be subject to outsourcing by the state and local government technology sector.

(c) Contractors and subcontractors are using taxpayer dollars to create jobs in foreign countries. State taxpayer funds should be used to create jobs in the United States and in California.

SEC. 2. Section 5703 of the Government Code is amended to read:

5703. (a) Except as provided in subdivisions (b), (c), and (d), the Treasurer, in exercising the duties of agent for offering and selling bonds, whose duties include, among others, establishing the timing of a sale, preparation or approval of the documentation for the sale, sole authority to select the underwriters for negotiating the sale, and executing the bond purchase agreement on behalf of the state or the state's agencies, is responsible for developing and implementing a competitive process for selection of underwriters for negotiated offerings of bonds. The competitive process may be conducted on an issue-by-issue basis or to establish one or more pools of underwriters for various types of issues. The competitive process shall have at least all of the following features:



(1) Solicitation of written qualifications from at least 20 underwriting firms.

(2) Consideration of the goals for minority and women business enterprise participation in professional bond services contracts.

(3) The written submissions shall be available for inspection at the office of the Treasurer for a period of at least six months.

(4) If a pool of underwriters is established, the competitive process shall be repeated at least every 24 months to reestablish the pool of underwriters.

(b) For negotiated offerings of bonds by state financing authorities that act as conduits to provide financing to other public, nonprofit, or private organizations, the Treasurer shall use the competitive process described in subdivision (a) to establish one or more pools of underwriters for each financing authority. The Treasurer may make additions to a pool without competitive solicitation, on a case-by-case determination upon the recommendation of a project applicant, where the Treasurer finds that the underwriter to be added has provided significant services to the project applicant with the expectation of compensation for those services from underwriting the revenue bonds which will fund the applicant's project.

(c) The Treasurer may select underwriters for a negotiated sale of bonds by means other than as described in subdivision (a) if the Treasurer makes a written finding that extraordinary market conditions do not allow enough time to comply with subdivision (a) without risking financial detriment to the state.

(d) Subdivisions (a), (b), and (c) shall not apply to the issuance of state bonds for which the Treasurer is precluded by statute from selecting underwriters.

(e) For negotiated sales, the Treasurer shall maintain records of all cost information pertinent to the initial offering of all state bonds, except that in the case of bonds issued by a state financing authority, as described in subdivision (b), the issuing state financing authority shall instead be responsible for maintaining the same cost information on bonds it has issued. The information shall include, but not be limited to, all of the following:

(1) All amounts paid out of bond proceeds to the underwriter, detailed by management fee, takedown, risk, and underwriter's expenses.



(2) All costs paid out of bond proceeds to rating agencies for rating of the bonds.

(3) All fees paid out of bond proceeds to bond counsels, trustees, or financial advisers relating to the initial offering of the bonds.

(4) The interest rate to be paid on the bonds.

(f) For competitive sales, the Treasurer shall maintain records of all bids submitted and the documentation of bid verifications including the terms of sale and the calculation of net interest cost or true interest cost.

(g) The State Auditor shall audit the cost records required to be maintained pursuant to subdivision (e) and conduct a review of the records required to be maintained pursuant to subdivision (f).

(h) The State Auditor shall report whether this section is being fully implemented. The State Auditor shall make cost and interest rate comparisons with similar initial bond offerings of other states where possible. The State Auditor shall submit a report to the Legislature on March 1, 1993, and March 1, 1995, for bonds sold during the two calendar years immediately preceding the year in which the report is due.

(i) The following provisions of the Public Contract Code do not apply to agreements entered into by the Treasurer in connection with the sale of any evidence of indebtedness:

(1) Section 10295.

(2) Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2.

(3) Chapter 3.55 (commencing with Section 12140) of Part 2 of Division 2.

SEC. 3. Chapter 3.55 (commencing with Section 12140) is added to Part 2 of Division 2 of the Public Contract Code, to read:

CHAPTER 3.55. OFFSHORING STATE SERVICE CONTRACTS

12140. (a) Notwithstanding any other provision of law, neither a state agency in expending funds from a fund in the State Treasury nor a local government in expending funds provided by a state agency may contract for services with a contractor or subcontractor unless that contractor or subcontractor certifies under penalty of perjury in his or her bid for the contract that the

contract, and any subcontract performed under that contract, will be performed solely with workers within the United States.

(b) Notwithstanding any other provision of law, state funds for employment training may not be allocated or expended to train employees located in foreign countries.

(c) The contract shall provide that in the event a contractor or subcontractor performs the contract or the subcontract with workers outside the United States during the life of the contract, the contract shall be terminated for noncompliance and the contractor or subcontractor shall forfeit penalties to the state agency or local government in an amount equal to the amount paid by the state agency or local government for the percentage of work that was performed with workers outside the United States.

(d) (1) A state agency or local government may waive the requirements of subdivision (a) for a particular contract, for a period not to exceed one year per waiver, if that state agency or local government submits a written finding to the Controller, and the Controller does not reject that finding within 30 days of receipt, that either of the following are true:

(A) The contract is necessary to respond to an emergency, as determined by the state agency or local government, for all of the following reasons:

(i) The ability of the state agency or local government to provide essential services would be adversely affected if the contract is not performed.

(ii) The public health, safety, and welfare would be endangered if the contract is not performed.

(iii) A contractor or subcontractor that has the ability to perform the contract solely with workers within the United States is not immediately available to perform the contract.

(B) The contract is necessary to provide a unique service, as determined by the state agency or local government, for both of the following reasons:

(i) The state agency or local government deems as mandatory the particular service to be performed under the contract.

(ii) Domestic workers cannot adequately perform the unique service to be performed under the contract.

(2) A state agency or local government that seeks a waiver under paragraph (1) shall, at the same time that the entity provides the written finding to the Controller, provide a copy of that written



finding to the Assembly Committee on Business and Professions, the Assembly Committee on Budget, the Senate Committee on Governmental Organization, and the Senate Committee on Budget and Fiscal Review.

(3) If the Controller rejects a written finding while the contract is being performed or after the contract has been performed, the contractor or subcontractor shall forfeit penalties to the state agency or local government in an amount equal to the amount paid by the state agency or local government for the percentage of work that was performed with workers outside the United States.

(e) This section shall not apply to a contract if refusing to award that contract, on the basis that the contractor or subcontractor does not certify under penalty of perjury that the contract, and any subcontract performed under that contract, will be performed solely with workers within the United States, would violate the specific terms of the Agreement on Government Procurement of the World Trade Organization or any other bilateral or regional free trade agreement that California has consented to.

(f) As used in this section, the following definitions apply:

(1) “Local government” means any county, city, city and county, including a charter city or county, any special district, or any other local or regional government entity.

(2) “State agency” means any state office, officer, department, division, bureau, board, commission, agency, or any subdivision thereof, that is part of state government, but does not include the Board of Administration of the Public Employees’ Retirement System, as described in Section 20090 of the Government Code, or the Teachers’ Retirement Board, as described in Section 22200 of the Education Code.

(g) This section shall not apply to seismic retrofit work for state highway projects, as defined in Section 180 of the Streets and Highways Code, that is performed pursuant to a contract that is entered into on or before January 1, 2006.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within



the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 2004

Governor

